

(1994) 02 MP CK 0004
In the Madhya Pradesh High Court
Case No : M.P. No. 1239 of 1992

Suresh Kumar Sharma

APPELLANT

Vs

Municipal Council and Others

RESPONDENT

Date of Decision : 25-02-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Madhya Pradesh Municipal Employees Recruitment and Conditions of Service Rules,
1968 — Rule 15, 16, 16(2), 2, 3
Madhya Pradesh Municipalities Act, 1961 — Section 355(1), 94(1), 94(2), 94(4), 94(7)

Citation : (1994) J LJ 479 : (1994) 1 MPJR 198

Hon'ble Judges : S.K. Dubey, J; K.M. Pandey, J

Bench : Division Bench

Advocate : R.D. Jain and Arun Mislira, for the Appellant; Arvind Dudawal,
Additional Government, R.S. Vajpai, J.S.L. Sinha, C.S. Dixit and R.N. Sharrna, for
the Respondent

Final Decision : Allowed

Judgement

S.K. Dubey, J.

This order shall govern disposal of Misc. Petition No. 1240 of 1992 (Ram Kumar Tripathi v. Municipal Council, Alamaur and Ors.); Misc. Petition No. 1242 of 1992 (Ramroop Sakliawar v. Municipal Council, Ambah and Ors.); Misc. Petition No. 1243 of 1W2 (Dalaram Yadav v. Municipal Council, Mow and Ors.); Misc. Petition No. 1244 of 1992 (Awadhesh Kumar Tripathi v. Municipal Council, Daboh and Ors.) and Misc. Petition No. 1892 of 1992 (Umesh k Chandra Soni v. Director of Urban Administration Bhopal and Anr.) as well.

The six Petitioners, by their separate petitions under Articles 226 and 227 of the Constitution of India, have challenged their transfer order passed by the Director of Urban Administration, Madhya Pradesh, Bhopal, on 25.7.1992. That is a common order and by that, as many as 111 employees of various Municipal Councils in the State of Madhya Pradesh were transferred from different places to

different places in the State. Details, relevant for disposal of the petitions in hand are as tabulated below:

S. No. M.P. No. Name of the Petitioner and the post held Present place of posting Place where transfer is ordered

1. 1239/92 Suresh Kumar Sharma Nakedar (Moharrir) Ambah (District Morena) Bijroni (District Shivpuri)
2. 1240/92 Ram Kumar Tripathi, Nakedar (Moharrir) Alampur (District Bhind) Datia.
3. 1242/92 Ramroop Sakhwar, nakedar (Moharrir) Ambah (District Morena) Alampur (District Bhind)
4. 1243/92 Dataram Yadav, Nakedar (Moharrir) Mow (District Bhind) Ambah (District Morena)
5. 1244/92 Awadhesh Kumar Tripathi, Nakedar (Moharrir) Daboh (District Bhind) Maharajpur (District Chhatarpur)
6. 1292/92 Umesh Chandra Soni, L.D.C. Mihona (District Bhind) Vaikunthpur (District Surguja)

Petitioners (who are all Class IV employees except the Petitioner in M.P. No. 1292 of 1992), in their petitions, contend that their posts are not transferable and do not fall within any of the categories mentioned in Sections 94(1) and 94(2) of the M.P. Municipalities Act, 1961, for short, the "Act". Therefore, the order of the State Government, through its delegatee, the Director of Urban Administration, could not have passed the order of transfer. The Petitioners also contend that they are not the employees of the State Municipal Service, nor were they appointed by the State Government, but were appointed by their respective Council concerned. Their seniority is maintained in the Municipal council and according to their seniority, the promotions are made to the next higher post in the said Municipal Council. As their gradation or seniority list is not maintained in relation to the whole of the State of Madhya Pradesh, their transfer to Anr. Municipal Council would adversely affect their conditions of service. They are low-paid employees and their transfer order, without any reason, to adjust the favourites, is mala fide, which will uproot the family of the Petitioners.

Municipal Councils and the State, by their separate returns in each of the petitions, contested the petitions by contending therein that u/s 94(7) of the Act, the State Government is empowered to transfer any officer or servant of a Council, mentioned in Sub-sections (1) and (2) of Section 94 whose total emoluments exceed Rs. 100/- to any other Council. The State Government, vide Notification, published in the M.P. Government Gazette, dated 22.11.1977, delegated its powers exercisable by it under Sections 94(4) and 94(7) of the Act to the Director of Urban Administration (Annexure R/I). Therefore, the order of transfer, passed by the Director, Urban Administration, is not without jurisdiction.

The transfer of the employees is in exigencies of administration and in public interest. Consequent upon the order of transfer of the Petitioners from one Municipal Council to Anr. , the seniority of the Petitioners and the resultant promotion on that basis is not affected(SIC) in any manner. Therefore, the orders of transfer are not in violation of any statutory provision nor are malafide.

We heard Shri R.D. Jain, learned Counsel for the Petitioner and Shri R.S. Vajpai, learned Counsel for the Municipal Council, respectively in M.P. No. 1292 of 1992; Shri Arun Mishra, Counsel for Petitioners in all other petitions; Shri J.S.L. Sinha, learned Counsel for Municipal Councils in M.P. Nos. 1239 of 1992 and 1242 of 1992; Shri C.S. Dixit, learned Counsel for Municipal Councils in M.P. Nos. 1240 of 1992 and 1243 of 1992; Shri R.N. Sharrna, learned Counsel for Municipal Council in M.P. No. 1244 of 1992 and Shri Arvind Dudawat, Additional Government Advocate, for the State and the Director, Urban Administration, Madhya Pradesh, Bhopal, in all the petitions.

After hearing counsel, we are of the opinion that it is not necessary for us to delve into the question whether the total emoluments of the posts which the Petitioners held were exceeding Rs. 100/-, for the purposes of Section 94(7) of the Act on the appointed date, that is, on 1st of April, 1964, in accordance with the Madhya Pradesh Municipal Services (Scale of Pay and Allowances) Rules, 1967; nor is it necessary for us to go into the question whether in view of the two decisions of this Court in the case of Sluinkar Lal and Ors. v. State of Madhya Pradesh and Anr. (1968 JLJ 1062) and of Jamuna Prasad Pandoria v. Director, Nagar Prashasan, Madhya Pradesh, Bhopal [1991 (2) MPJR 234], the Petitioners/employees fall within the expression "other officers and servants" under Sections 94(1) and 94(2) of the Act. So far as the question of "other officers and servants" is concerned, the State of Madhya Pradesh appealed in the Supreme Court against the decision in Shankar Lal's case (supra) which related to Lecturers and Teachers appointed in the various Schools by the Municipal Councils who were transferred by the State Government u/s 94(7) of the Act. The Supreme Court, while reversing the decision of this Court in the case (see, State of Madhya Pradesh Vs. Shankar Lal and Ors, State of Madhya Pradesh v. Shankar Lal), has ruled that the words "any officers or servants of a Council mentioned in Sub-sections (1) and (2)", occurring in Sub-section (7) does not mean "any officer or servant as enumerated or specified in Sub-sections (1) and (2); that is to say, only Revenue Officer, Accounts Officer, Sanitary Inspector and an Overseer, a Revenue Inspector or an Accountant only. No such restricted meaning can be given to Sub-section (1) of Section 94. Other officers and servants who can be appointed by the Municipal Council, either under Sub-section (1) or (2) are also the officers and servants mentioned in these Sub-sections for the purposes of Sub-section (7). Theoretically, therefore, the power does exist in the State to transfer them.

In respect of a transferable service or post of a particular cadre, transfer is an ordinary and normal incident of service, and in the exigencies of public

administration when transfer is made in the similar post and cadre, no legitimate grievance can be raised as it is well-settled that an employee can challenge his transfer only when the order of transfer is vitiated by malafide or is in violation of the statutory provision. See, *Union of India and Ors. v. S.L. Abbas* (1993 AIR SCW 1753).

The Petitioners are low-paid employees and, therefore, the Petitioners have placed implicit reliance on the observations of the Supreme Court in the case of *Shankar Lal* (supra) in which the Supreme Court, while holding that the State Government has got power u/s 94(7) of the Act to transfer any officer or servant, in para 2, observed thus: "We must, however, has an lo add that in case of employees getting small emoluments the power seems to be meant to be sparingly exercised under some compelling exigencies of a particular situation and not as a matter of route. If it were to be liberally exercised, it will create tremendous problems and difficulties in the way of municipal employees getting small salaries. There may be hardly an employee serving under any Municipal Council who cannot be theoretically and literally covered by Sub-sections (1) and (2) and subjected to the exercise of power of transfer under Sub-section (7)".

Here too, neither in the order, nor in the return; the Respondents have demonstrated why the Petitioners who are Class IV or low-paid employees are transferred to long distances or from one district to Anr. , except saying that the transfer was administrative exigencies and in public interest and, therefore, the orders cannot be interfered by this Court. Even if this stand is accepted, the transfer orders are attacked on Anr. ground, namely, that the said orders affect the seniority of the Petitioners. Petitioners contend that each Municipal Council is an autonomous body, there is no centralised gradation list of the Municipal Councils in State of Madhya Pradesh, the gradation list is maintained Municipality-wise, therefore, by the order of transfer to other Municipalities, their legitimate right of seniority and in consequence of that, their right of consideration for promotion are adversely affected. To meet this contention, Respondents were granted time to place the material or to demonstrate that State-wise gradation or seniority list is maintained, but they could not place any material to show that the seniority of these Class IV employees, i.e. Nakedars (Moharrirs) and L.D.C's. is maintained State-wise, therefore, this ground deserves consideration.

It is well-known that transfer is normally resorted in same cadre without adversely affecting the conditions of service so that any person entering the service may feel secure of equality in continuance, promotion etc. Any executive action violating it cannot be upheld. Seniority is an incidence of service which cannot be eroded or curtailed by a rule which operates discriminately. See, recent decision of the Supreme Court in *K. Narayanan and others Vs. State of Karnataka and others*,

11 In case of *Arun Kumar Chatterjee Vs. South Eastern Railway and Others*, the Supreme Court has observed that loss of seniority of a Government servant with consequent loss of promotional prospects of higher pay and emoluments is a

matter of serious consequence to him.

In case of Dr. M.S. O.Z. Hussain v. Union of India, reported in 1990 (60) Indian Factories & Labour Reports p. 74, the Supreme Court pointed out that provisions for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion thus is a normal incidence of service.

To determine whether the seniority of the Petitioners is affected or not, we have to look to relevant rules framed in exercise of powers conferred by Sub-section (1) of Section 355 read with Section 95 of the Act, the State Government has framed rules called as the Madhya Pradesh Municipal Employees (Recruitment and Conditions of Service) Rules 1968, for short, the "Rules". Rule 2 is a definition clause, the relevant clauses we quota:

(c) "Government" means the Government of the State of Madhya Pradesh;

(d) "Government Servants" means the servant of the State Government of Madhya Pradesh;

(e) "Municipal Employee" means a person appointed to or borne on the cadre of the Municipal Staff other than a member of the State Municipal Service (Executive);

(f) "Municipal Service" means the service or group of posts in connection with the affairs of the Municipality other than the State Municipal Service (Executive);

(g) "Post" means a whole time employment under the Municipal Council but does not include any employment where the employee is paid from contingency;

Part II of the Rules relates to cadre. Rule 3 speaks of composition of cadre which reads thus:

Composition of strength of the Municipal Service.-The strength of the Municipal Service and the designations of the posts therein shall be determined by the Government from time to time.

Part III of the Rules relates to recruitment, qualifications and procedure for direct recruitment. Part VI of the Rules deals with procedure for recruitment by promotion. Rule 15 and 16 speaks of gradation list and seniority, which read thus:

Gradation List. - A gradation list shall be maintained for the municipal service in which shall be arranged in order of seniority the names of the municipal employees holding the posts included in the municipal services:

Provided that when the Municipal service consists of two or more district branches or group of posts and transfers are not ordinarily made from one branch or group of posts to Anr. , a separate gradation .list shall be maintained for each branch or group of posts of the service.

Seniority.-(l) The seniority of a directly recruited or a promoted municipal

employee appointed on probation shall count during his probation from the date of his appointment.

Provided that if more than one person has been selected for appointment on probation at the same time, the inter se seniority of the persons so selected shall be according to the order of merit in which they were recommended for appointment by the District Selection Committee in those cases where the appointments are made from the panel of names recommended by such committee, and according to the order of merit determined by the appointing authority at the time of selection in other cases.

(2) The same order of inter se seniority shall be maintained on the confirmation of the normal period of probation. If, however, the period of probation of any municipal employee is extended, the appointing authority shall, after consultation with the District Selection Committee, determine whether he should be assigned the same seniority as would have been confirmed on the expiry of the normal period of probation or whether he should be assigned a lower seniority.

A bare look to the proviso to Rule 15 shows that a separate gradation list for each branch or group is maintained of the employees Municipal service which consists of two or more district branches or groups of posts and of such employees, whose transfers are not generally made from one branch or group of posts to another. The word "district" seems to be a misprint for "distinct". Even if that may not be so, it would not make material difference in the present case.

Rule 16 deals with inter se seniority of recruited or promoted municipal employees recommended for appointment by the District Selection Committee according to the order of merit and in other cases, according to the order of merit determined by the appointing authority at the time of selection. The same order is to be maintained on confirmation of employees after the normal period of probation. In case of extension of period of probation, the appointing authority, after consultation with the District Selection Committee, determines the seniority as per Sub-rule (2) of Rule 16. From the above and the proviso to Rules 15 and 16, it is clear that a gradation and seniority list is to be maintained. However, there is an exception relating to gradation list as provided by the proviso to Rule 15 which specifies that when the Municipal service consists of two or more district branches or group of posts and transfers are not ordinarily made from one branch or group of posts to another, a separate gradation list shall be maintained for each branch or group of posts of the service. Respondents have not even said that the separate gradation lists are maintained in terms of the proviso to Rule 15.

In the background of the settled legal position, and when the Petitioners assent that their seniority is maintained in the Municipal Council where they were appointed by the Municipal Council and when there is no State level gradation and seniority list of the municipalities in the State of Madhya Pradesh, in such a situation on the transfers of the Petitioners to different Municipal Councils, the

seniority of the Petitioners and right to be considered for promotion will be seriously affected; these facts cannot be lost sight of as seniority arid a right to be considered for promotion is a term of service. Therefore, Respondents" reliance on the decision in the case of Dr. Vasant, rendered by this Court, reported in 1986 J LJ 115 = 1986 CCLJ (M.P.) 98, wherein while considering a case of transfer, observed that the transfer order cannot be said to be malafide merely because the chances of promotion are affected as the promotion is not a vested right and is distinguishable on facts and is of no help to Respondents in the light of the law declared by the Supreme Court in the cases referred to above in paras 10, 11 and 12.

In the facts and circumstances of these cases, when the Respondents have failed to stale that seniority is maintained State-wise of the employees working in the various Municipal Councils, we are of the opinion that the transfer orders carry with them consequentially affecting their seniority and right to be considered for promotion. Therefore, the orders cannot be sustained as they affect their conditions of service adversely in violation of statute and are malafide.

In the result, the petitions are allowed. Orders of transfers in so far as they relate to the Petitioners in these petitions, are quashed, but in the circumstances of the case, we leave parties to bear their own costs.